

Message Text

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SUBJECT: COOLEY LOAN DIVIDEND REMITTANCES AND PROFITS BLOCKING PROBLEM

AMERICAN HOME PRODUCTS CORPORATION

REF: A. STATE 211156, B. ISTANBUL 3363

SUMMARY. PROBLEM OF WYETH LABORATORIES IN TURKEY WITH RESPECT TO REQUIREMENT THAT PROFITS ATTRIBUTABLE TO COOLEY LOANS BE BLOCKED IS SIMILAR TO THAT ENCOUNTERED EARLIER BY SEVER OTHER COMPANIES. 1974 DECISION BY COUNCIL OF STATE CONFIRMED REQUIREMENT. NO INFORMATION IS AVAILABLE TO EMBASSY OR CONGEN ISTANBUL TO SUGGEST THAT WYETH HAS ANY OPTION UNDER PRESENT LAW BUT TO BLOCK COOLEY-RELATED PROFITS. END SUMMARY.

1. SITUATION OF WYETH LABORATORIES IS SIMILAR TO THAT OF ALL AMERICAN COMPANIES IN TURKEY BENEFITING FROM COOLEY LOANS. IN LATE 1960'S AND EARLY 1970'S FINANCE MINISTRY REQUESTED FOREIGN INVESTORS WHOSE ENTRY HAD BEEN AUTHORIZED UNDER LAW 6224 FOR ENCOURAGEMENT OF FOREIGN CAPITAL AND WHO HAD RECEIVED COOLEY LOANS TO DEPOSIT

IN BLOCKED ACCOUNTS IN CENTRAL BANK THAT PORTION OF THEIR PROFITS ATTRIBUTED TO COOLEY LOAN ELEMENT OF COMPANY'S STRUCTURE. COMPANIES AFFECTED-GOODYEAR, TURK KABLE (KAISER), UNIROYAL, WILLYS OVERLAND, TURK GENERAL ELECTRIC, PFIZER, SINGER, ABBOTT PHARMACEUTICALS, LIMITED OFFICIAL USE

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CHRYSLER, AND AMERICAN-TURKISH FOREIGN EXCHANGE BANK (BANK OF

AMERICA)--CON-

TESTED REQUIREMENT AND MANY BROUGHT ISSUE INTO TURKISH COURTS. IN 1971, MOST REACHED OUT-OF-COURT SETTLEMENTS WITH FINANCE MINISTRY. UNDER THEM, COMPANIES INDIVIDUALLY ENTERED INTO INFORMAL THREE-YEAR AGREEMENTS BEGINNING JANUARY 1, 1972, WHICH PROVIDED AMONG OTHER THINGS THAT (1) A COMPANY MIGHT DEBLOCK COOLEY-RELATED PROFITS TO EXTENT THAT THESE WERE OFFSET IN VALUE BY EXPORTS MINUS IMPORT COMPONENT BEFORE DECEMBER 31, 1974; (2) IT WOULD NOT ADD COOLEY PROFITS TO ITS CAPITAL BASE; AND (3) IT WOULD WITHDRAW ITS LAW SUIT. EMBASSY FILES SUGGEST THAT WILLYS OVERLAND (NO LONGER ACTIVE HERE) AND CHRYSLER, ONLY COOLEY COMPANIES NOT TO WITHDRAW SUITS, LOST THEIR CASES WHEN ADMINISTRATIVE COURT, IN DECISION RATIFIED BY COUNCIL OF STATE, CONFIRMED LEGAL REQUIREMENT THAT COOLEY LOAN-RELATED PROFITS BE BLOCKED. FOLLOWING DECISION, FINANCE MINISTRY NOTIFIED FIRMS TO DEPOSIT COLEY PROFITS WHICH, UP TO AUGUST 6, 1974, HAD NOT BEEN OFFSET BY EXPORTS. SINCE MOST COMPANIES HAD FULLY, OR NEARLY, FULFILLED THEIR EXPORT REQUIREMENTS BY THEN, MINISTRY RELENDED FOR FEW THAT HAD NOT AND PERMITTED THEM FULL PERIOD OF AGREEMENT. SINCE THEN, COMPANIES PARTY TO AGREEMENTS HAVE BEEN ALLOWED, BY VIRTUE OF THEIR VESTED RIGHTS PRIOR TO COURT DECISION, TO KEEP COOLEY PROFITS DEBLOCKED BUT THEY ARE NOT ALLOWED TO TRANSFER THESE PROFITS ABROAD. SINCE END OF 1974, ANY COMPANY, INCLUDING WYETH, WITH COOLEY FUNDS IN ITS CAPITAL STRUCTURE WHICH HAD NOT BEEN A PARTY TO AN AGREEMENT WITH FINANCE MINISTRY HAS BEEN REQUIRED TO BLOCK COOLEY PROFITS. (SEE TOAID A-178, APRIL 7, 1970 FOR OPINION OF TURKISH ATTORNEY RETAINED BY US AID MISSION TO LOOK INTO PROBLEM; 71 ISTANBUL 965; ISTANBUL 2206.

2. ECONCOUNSELOR CALLED ON ABIDIN AYDIN, CHIEF OF FOREIGN CAPITAL ENCOURAGEMENT SECTION OF TURKISH TREASURY, SEPTEMBER 2, FOR INFORMATION RELATING TO WYETH PROBLEM. AYDIN ADVISED THAT WYETH MAKE PAYMENTS REQUESTED BY CENTRAL BANK ONGROUNDS THAT LAW PROVIDED NO ALTERNATIVE.

3. AYDIN SAID REQUIREMENT THAT COOLEY-RELATED PROFITS BE BLOCKED IS MUCH DISCUSSED SUBJECT WITHIN GOT. BLOCKING CANNOT GO ON INDEFINITELY, IN HIS OPINION. HE EXPECTED MATTER WOULD EVENTUALLY HAVE TO BE REVIEWED BY COUNCIL OF MINISTERS (CABINET). IT IS POSSIBLE THAT NEW GENERAL DECREE AFFECTING ALL COOLEY-LOAN COMPANIES WILL EVENTUALLY

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RESULT FROM COUNCIL'S CONSIDERATION, PERHAPS PERMITTING DEBLOCKING IN EXCHANGE FOR TRANSFERS OF TECHNOLOGY OR OTHER ADVANTAGES TO TURKEY. HOWEVER, HE ACKNOWLEDGED, NO STEPS HAVE YET BEEN TAKEN TO RAISE MATTER TO COUNCIL. IN EMBASSY'S OPINION, SUCH A REVIEW COULD DISADVANTAGE THE AMERICAN FIRMS NOW USING THEIR DEBLOCKED COOLEY PROFITS AS REVOLVING FUNDS IN LIEU OF HIGH-PRICED TURKISH LIRA LOANS.

4. AYDIN OFFERED PERSONAL OBSERVATION THAT GOT CONSIDERS COMPANIES INDIVIDUALLY IN JUDGING WHAT TO REQUIRE OF THEM. CONDITIONS DIFFER UNDER WHICH COOLEY FIRMS WERE ESTABLISHED. (NOTE: SPECIAL MINISTERIAL DECREES UNDER WHICH EACH INVESTMENT WAS APPROVED, IMPOSED VARYING CONDITIONS WITH REGARD TO SUCH MATTERS AS MINIMUM ACCEPTABLE PERCENTAGE/VALUE USE OF LOCAL RAW MATERIALS AND SEMIMANUFACTURES; MINIMUM ANNUAL OUTPUT; MAXIMUM GROSS PROFIT MARGINS; FIXED MINIMUM ANNUAL EXPORT VALUES; TYING OF CURRENCY TRANSFERS IN RESPECT OF PROFIT REMITTANCES AND IMPORTED MATERIALS TO EXPORT EARNINGS.) COMPANIES WHICH HAVE MANAGED TO FULFILL OBLIGATIONS SET OUT IN THEIR INVESTMENT DECREES, AYDIN SAID, ARE TREATED DIFFERENTLY THAN THOSE WHICH HAVE NOT, ALTHOUGH IN NO CASE DOES SUVH FAVOR EXTEND TO TRANSFER OF COOLEY-RELATED PROFITS. AYDIN DID NOT SUGGEST IN WHAT MANNER THIS TREATMENT MIGHT DIFFER OR ELABORATE ON HIS STATEMENT THAT GOT ALSO HAS FLEXIBILITY IN ITS APPLICATION OF DECREE 17 WHICH HE CLAIMED PROVIDED BASIS FOR BLOCKING REQUIREMENT. AYDIN'S CAUTIOUS, NONCOMMITTAL MANNER PREVENTED EXPLORATION OF THESE POINTS.

7. IN THIS CONNECTION, IT IS WORTH NOTING THAT GOT MAY CONSIDER WYETH TO HAVE VIOLATED ITS INVESTMENT DECREE ON AT LEAST THREE COUNTS.

AYDIN SAID THAT FINANCE MINISTRY DOES NOT REGARD WYETH'S EXPORT RECORD AS GOOD. CHIEF, CAPITAL MOVEMENTS SECTION, CENTRAL BANK, ANKARA, TOLD EMBASSY THAT WYETH HAD ILLEGALLY TRANSFERRED ABROAD SOME COOLEY-RELATED PROFITS IN ADDITION TO PROFITS IT WAS ENTITLED TO TRANSFER UNDER LAW 6224. REF A REPORTS THAT WYETH HAS ENGAGED IN ACTIVITIES OUTSIDE SCOPE OF ITS INVESTMENT DECREE. (CONGEN ISTANBUL UNDERSTANDS THOSE TO BE MANUFACTURE OF TOILET ARTICLES.L

8. SIGNIFICANT DIFFERENCE IN WYETH'S SITUATION FROM THAT OF OTHER COOLEY-LOAN COMPANIES IS THAT GOT HAS MADE DEPOSIT OF FUNDS CON-

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DITION FOR REMITTANCE OF DIVIDENDS. WYETH'S ATTORNEY PROTESTED SEVERAL TIMES TO FINANCE MINISTRY LEGALITY OF LINKAGE BUT DID NOT ASK FOR REVIEW BY STATE SUPREME COUNCIL WITHIN 90-DAY TIME PERIOD ALLOWED, ACCORDING TO AYDIN, WHO DOUBTED THAT SUPREME COUNCIL WOULD ANY LONGER CONSIDER AN APPLICATION BY WYETH FOR A REVIEW OF THIS POINT. EMBASSY SUSPECTS THAT WYETH'S ALLEGED VIOLATIONS OF ITS INVESTMENT DECREE MAY BE ONE REASON FOR LINKAGE. EMBASSY IS UNAWARE OF LINKAGE IN EARLIER CASES.

9. CONGEN ISTANBUL, IN COVERSATION WITH HAMDI DURUST, TURKISH MANAGER OF WYETH, SEPTEMBER 2, LEARNED THAT ONE OF WYETH'S LEGAL ADVISERS IN ISTANBUL HAS COUNSELED THAT FIRM ATTEMPT TO REACH COMPROMISE WITH FINANCE MINISTRY. AMERICAN HOME PRODUCTS GENERAL COUNSEL, REPORTEDLY, IS DELAYING AUTHORIZING THIS APPROACH UNTIL HE IS

SATISFIED THAT BLOCKING IS LEGALLY REQUIRED. 1974 COUNCIL OF STATE DECISION WOULD APPEAR TO LEAVE LITTLE POSSIBILITY FOR OFF SETTING COOLEY PROFITS WITH OTHER CONDITIONS. ON BASIS OF RECORD, IT APPEARS PROBABLE TO EMBASSY THAT WYETH HAS NO RECOURSE UNDER PRESENT LEGISLATION EXCEPT TO DEPOSIT COOLEY PROFITS AS REQUESTED.

10. EMBASSY WILL INQUIRE ABOUT LINKAGE ISSUE, HOWEVER. IF WE CAN VERIFY OUR BELIEF THAT LAW ALLOWS GOT DISCRETION IN THIS AREA, DESPITE EMPHATIC REFUSAL FINANCE MINISTRY GAVE TO WYETH ATTORNEY'S REQUESTS FOR SEPARATION OF ISSUES, ECON COUNSELOR WILL URGE FINANCE MINISTRY TO PERMIT TRANSFER OF WYETH'S NON-COOLEY-RELATED PROFITS AS IT PERMITS TRANSFERS OF SUCH PROFITS BY OTHER COOLEY FIRMS. EMBASSY

IS NOT OPTIMISTIC ABOUT OUTCOME.
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